

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: Edith Ramirez, Chairwoman
Julie Brill
Maureen K. Ohlhausen
Terrell McSweeney

_____)
In the Matter of)
)
ArcLight Energy Partners Fund VI, L.P.,) Docket No. 151-0149
a limited partnership)
)
_____)

ORDER TO MAINTAIN ASSETS

The Federal Trade Commission, having initiated an investigation of the proposed acquisition by ArcLight Energy Partners Fund VI, L.P. (ArcLight or Respondent) of 100% of the partnership interests of Gulf Oil Limited Partnership from Cumberland Farms, Inc., and Respondent having been furnished thereafter with a copy of a draft of complaint that the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge Respondent with violations of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 8, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 5; and

Respondent, its attorneys, and counsel for the Commission having thereafter executed an agreement (Consent Agreement) containing consent orders, an admission by Respondent of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by Respondent that the law has been violated as alleged in such complaint, or that the facts as alleged in such complaint, other than jurisdictional facts, are true, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that Respondent has violated the said Acts, and that a complaint should issue stating its charges in that respect, and having thereupon accepted the Consent Agreement and placed such agreement on the public record for a period of thirty (30) days, now in further conformity with the procedure described in § 3.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following Order to Maintain Assets:

1. Respondent ArcLight EnergyPartners Fund VI, L.P. is a limited partnership organized, existing, and doing business under, and byvi

processes, customer lists, current and anticipated customer requirements, price lists, market studies, business plans, computer hardware, software and computer software and database technologies, systems, structures, and architectures;

3. all information concerning the relevant business (which includes historical and current financial statements, financial projections and budgets, tax returns and aD1(o)-4(f)2(a)1mat(a)1matematial, chirial, curr(a)1mat and (p)-4(r)-1(o)-4j tect sales, aphital(a)-3.9 ting and aertiing

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trailers, and the re-delivery of such products from storage tanks into tank trucks, rail cars, transport trailers, or pipelines, conducted by Cumberland (through Gulf Oil Limited

competitiveness, and marketability of the PA Terminals Business and PA Terminals Assets.

- C. Respondent shall preserve the PA Terminals Business and PA Terminals Assets as an ongoing business and not take any affirmative action, or fail to take any action within Respondent's control, as a result of which the viability, competitiveness, and marketability of the PA Terminals Business and PA Terminals Assets would be diminished.

III.

IT IS FURTHER ORDERED that prior to the Divestiture Date, Respondent shall secure all consents, assignments, and waivers or other authorizations from all Persons that are necessary for the divestiture of the PA Terminals Assets; *provided, however*, that Respondent may satisfy this requirement by certifying that Acquirer has executed appropriate agreements or obtained necessary authorizations directly with each of the relevant Persons.

IV.

IT IS FURTHER ORDERED that:

- A. Until the Divestiture Date, Respondent shall staff the PA Terminals Business and PA Terminals Assets with sufficient employees to maintain the viability and competitiveness of the PA Terminals Business and PA Terminals Assets, including but not limited to, providing each PA Terminals Employee with reasonable financial incentives, if necessary including continuation of all employee benefits and regularly scheduled raises and bonuses, to continue in his or her position pending divestiture of the PA Terminals Assets.
- B. Respondent shall cooperate with and assist Acquirer to evaluate and retain any PA Terminals Employee necessary to operate the PA Terminals Business in substantially the same manner as Cumberland prior to the divestiture, including but not limited to:
 - 1. Not later than fifteen (15) days before the Divestiture Date, Respondent shall (i) identify all PA Terminals Employees, (ii) allow Acquirer to inspect the personnel files and other documentation of all PA Terminals Employees, to the extent permissible under applicable laws, and (iii) allow Acquirer an opportunity to interview any PA Terminals Employee;

2. Respondent shall (i) not offer any incentive to any PA Terminals Employee to decline employment with Acquirer, (ii) remove any contractual impediments that may deter any PA Terminals Employee from accepting employment with Acquirer, including but not limited to, any non-compete or confidentiality provision of employment or other contracts with Respondent that would affect the ability of such employee to be employed by

- C. Respondent shall enter into an agreement with the Monitor, subject to the prior approval of the Commission, that (i) shall become effective no later than one (1) day after the date the Commission appoints the Monitor, and (ii) confers upon the Monitor all rights, powers, and authority necessary to permit the Monitor to perform his duties and responsibilities on the terms set forth in this Order and in consultation with the Commission:
1. The Monitor shall (i) monitor Respondent's compliance with the obligations set forth in this Order and (ii) act in a fiduciary capacity for the benefit of the Commission;
 2. Respondent shall (i) insure that the Monitor has full and complete access to all Respondent's personnel, books, records, documents, and facilities relating to compliance with this Order or to any other relevant information as the Monitor may reasonably request, and (ii) cooperate with, and take no action to interfere with or impede the ability of, the Monitor to perform his duties pursuant to this Order;
 3. The Monitor (i) shall serve at the expense of Respondent, without bond or other security on such reasonable and customary terms and conditions as the Commission may set, and (ii) may employ, at the cost and expense of Respondent, such consultants, accountants, attorneys, and other representatives and assistants as are reasonably necessary to carry out the Monitor's duties and responsibilities;
 4. Respondent shall indemnify the Monitor and hold him harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of his duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for, or defense of, any claim, whether or not resulting in any liability, except to the extent that such losses, claims, damages, liabilities, or expenses result from the Monitor's gross negligence or willful misconduct; and
 5. Respondent may require the Monitor and each of the Monitor's consultants, accountants, attorneys, and other representatives and assistants to sign a customary confidentiality agreement; provided, however, that such agreement shall not restrict the Monitor from providing any information to the Commission.
- D. The Monitor shall report in writing to the Commission concerning Respondent's compliance with this Order on a schedule as determined by Commission staff, including a final report after Respondent has completed all obligations required by Paragraph II. of the Decision and Order (not including Paragraph II.D.4.).
- E. The Commission may require the Monitor and each of the Monitor's consultants,

accountants, attorneys, and other representatives and assistants to sign a confidentiality agreement related to Commission materials and information received in connection with the performance of the Monitor's duties.

F. The Monitor's power and duties shall

1. Performing its obligations or as permitted under this

VIII.

IT IS FURTHER ORDERED that the purpose of this Order to Maintain Assets is to (i) preserve the PA Terminals Business and PA Terminals Assets as a viable, competitive, and ongoing business until the divestiture required by the Decision and Order is achieved; (ii) prevent interim harm to competition pending the relevant divestiture and other relief; and (iii) help remedy any anticompetitive effects of the proposed Acquisition as alleged in the Commission's Complaint.

IX.

IT IS FURTHER ORDERED that Respondent shall notify the Commission at least thirty (30) days prior to:

- A. Any proposed dissolution of Respondent;
- B. Any proposed acquisition, merger, or consolidation of Respondent; or
- C. Any other change in the Respondent, including, but not limited to, assignment and the creation or dissolution of subsidiaries, if such change might affect compliance obligations arising out of the Order.

X.

IT IS FURTHER ORDERED that, for the purpose of determining or securing compliance with this Order to Maintain Assets, and subject to any legally recognized privilege, and upon written request and upon five (5) days' notice to Respondent, Respondent shall, without restraint or interference, permit any duly authorized representative of the Commission:

- A. Access, during business office hours of the Respondent and in the presence of counsel, to all facilities and access to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of Respondent related to compliance with this Order to Maintain Assets, which copying services shall be provided by Respondent at its expense; and
- B. To interview officers, directors, or employees of Respondent, who may have counsel present, regarding such matters.

XI.

IT IS FURTHER ORDERED that this Order to Maintain Assets shall terminate:

- A. Three (3) business days after the Commission withdraws its acceptance of the Consent Agreement pursuant to the provisions of Commission Rule 2.34, 16 C.F.R. §.34; or
- B. Three (3) business days after the date that Respondent completes the divestiture required by Paragraph II.A. of the Decision and Order ; *provided, however*, that if at the time such divestiture has been completed, the Decision and Order in this matter is not yet final, then this Order to Maintain Assets shall terminate three (3) business days after the Decision and Order becomes final.

By the Commission.

Donald S. Clark
Secretary

SEAL:
ISSUED: December 28, 2015